

General Information

Purpose of the Pamphlet -- This pamphlet provides an overview of the Hearing Examiner system established in San Juan County. It is intended to serve as a guide to participants in the hearing process.

Establishment of Hearing Examiner -- The County Commissioners created the position of Hearing Examiner in early 1994. The purpose was to subject certain decisions to a hearing process run by an independent officer who has no planning or policy-making functions. The intent was to provide a fair way both to obtain facts about specific projects and to apply the enacted approval standards to them.

Hearing Examiner Jurisdiction -- The Hearing Examiner is to conduct public hearings, make findings and conclusions, and enter a decision on the following:

- a) Shoreline Substantial Development Permits
- b) Shoreline Conditional Use Permits
- c) Shoreline Variances
- d) Appeals from decisions of the Planning Director under the Shoreline Master Program
- e) Appeals from decisions of the Planning Director on Short Plats
- f) Appeals from decisions of the Planning Director under the Land Division Ordinance
- g) Appeals from decisions of the Responsible Official under the State Environmental Policy Act (SEPA)

Types of Hearings --The Hearings Examiner holds two basic types of public hearings: (1) Permit hearings and (2) Appeal hearings. Permit hearings are held before any decision has been made on an application and are concerned with creating a record on which to base a decision. Appeal hearings are held after an administrative decision affecting a proposal has already been made, when someone involved in the process asks that the matter be looked at again by the Hearing Examiner. The processes for permit hearings and appeal hearings differ in some ways. This pamphlet explains the shared features and the differences.

Basis for Decisions -- Public testimony is encouraged in all permit hearings but the Hearing Examiner is concerned not with the popularity of the proposal, but with whether it conforms to criteria for approval under the applicable ordinance. The Examiner decides matters on the merits, based on the preponderance of the evidence.

Appeals from Hearing Examiner Decisions -- The decisions of the Hearing Examiner are final unless appealed. SEPA decisions on procedural matters are appealable to the Superior Court. All other decisions are appealable to the County Commissioners.

Basis for Decisions on Appeal from Hearing Examiner -- In appeals from the Hearing Examiner, the Court or the County Commissioners are limited to information in the record made before the Examiner. Further, the reviewing body cannot simply substitute its own view of the facts. The Examiner's fact findings must be upheld unless they are not supported by substantial evidence.

When and Where Hearings are Held -- For the first 10 months of the year, the Hearing Examiner, holds regularly scheduled hearings on the second and fourth Friday of the month. In November and December only one Friday is used for regularly scheduled hearings. Normally hearings are held in the Commissioner's Meeting Room at the Courthouse in Friday Harbor. On occasion hearings may be specially scheduled for other days or held at other places.

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Chapter 1 - Features Common to all Hearings

1.1 Oath

All testimony shall be taken under oath or affirmation.

1.2 Recording

Hearings shall be electronically recorded and the recordings shall be made a part of the record. Copies of the electronic recordings shall be made available on request upon payment of the costs of reproduction.

1.3 Evidence

Technical rules of evidence will not be applied. The key requirements for evidence will be relevance and reliability. Relevant and reliable evidence will be admitted if it possesses probative value commonly accepted by reasonable persons in the conduct of their affairs.

1.4 Exhibits

Documents, photographs and physical evidence will be admitted as exhibits and each will be assigned an exhibit number. Exhibits will be retained until after a decision is rendered and all appeal proceedings, if any, have been concluded.

1.5 Staff Report or Analysis

The Staff Report or Staff Analysis produced by the Planning Department will be admitted as Exhibit 1 in every hearing.

1.6 Testimony - How Presented

Testimony may be presented orally, in writing, or both. Persons giving oral testimony shall be subject to questioning. Written testimony may be presented either in advance or at the hearing. When testimony is presented only in writing, the Hearing Examiner has discretion to leave the record open for written responses by other participants.

1.7 Limits on Testimony

The Hearing Examiner may impose reasonable limitations on the nature and length of testimony. In so doing the Examiner shall give consideration to:

- a) The expeditious completion of the hearing.
- b) The need to provide all parties of record a fair opportunity to present their cases.
- c) Accommodating the desires of members of the public to be heard, when public testimony is taken.

At the Examiner's discretion, irrelevant or unduly repetitious testimony may be excluded. If all testimony cannot be presented in the time available, the hearing will be continued.

1.8 Filing of Papers

All written submissions made in advance of hearing shall be filed with the Planning Department, marked for the attention of the Hearing Examiner.

1.9 Communications Outside of Hearing and not in Record

No communications with the Hearing Examiner outside of the hearing are allowed on the merits or facts of any matter which has been or will be scheduled to come before the Examiner. This prohibition includes, but is not limited to, communications with County employees, applicants and their representatives and other participating in the hearing process.

1.10 Site Visits

The Hearing Examiner has the option to visit the site before or after a hearing. If the Examiner conducts a post-hearing visit in response to a request made at the hearing by a party of record, the hearing record will be held open until the site visit is completed.

1.11 Form And Timing of Examiner's Decision

The Examiner will not announce a decision at the hearing. The decision will be contained in a written decision document with supporting findings and conclusions. Normally this document will be issued about 10 working days after the record closes.

1.12 Substance of Examiner's Decision

The Examiner may approve or deny the application or appeal before him. In any decision which allows a project, the Examiner may impose reasonable conditions.

1.13 Continuation or Reopening of Hearing

The Examiner may by order continue or reopen proceedings for good cause any time prior to the issuance of the decision.

1.14 Who Receives Copies of Decision

The Planning Department will maintain a copy of the Hearing Examiner's decision, available for public inspection, in the official file of each application or appeal. The applicant and any appellant will receive a copy of the Hearing Examiner's decision free of charge. Any other person may receive a copy upon payment of the costs of reproduction and postage.

1.15 Correction of Examiner's Decision

Technical defects in the Examiner's decision may be corrected any time prior to the end of the appeal period, but no such correction shall operate to lengthen the appeal period.

1.16 Termination of Jurisdiction

The jurisdiction of the Examiner terminates upon the end of the appeal period for a decision. The Examiner's jurisdiction may be revived only by a remand from the County Commissioners or a court.

Chapter 2 - Permit Hearings

2.1 Public Participation

At permit hearings members of the public are invited to express their views and to offer factual testimony and exhibits.

2.2 PARTIES OF RECORD

The initial parties of record to a permit hearing are the applicant and the County. Any individual or organization that participates in the hearing by oral testimony or written submission shall by such action become a party of record.

2.3 INTERESTED PERSONS

Interested persons are those individuals or organizations indicating a desire to be informed of the result of the hearing by signing the sign-up sheet or otherwise notifying the Planning Department, but who do not give testimony.

2.4 FORMAT OF PERMIT HEARINGS

The public hearing will be informal in nature, but organized so that testimony and evidence can be presented efficiently. The hearing shall include at least the following elements:

- a) An introductory outline of the procedure by the Examiner
- b) Testimony by the Planning Department staff which shall summarize the written Staff Report and provide any additional exhibits or other information the staff believes should be brought to the Examiner's attention. The staff presentation shall include a recommendation for approval, approval with conditions, or denial.
- c) Testimony by the applicant and the applicant's witnesses.
- d) Testimony from other individuals or organizations wishing to be heard, including any questions they may have for staff, the applicant or witnesses who have testified for staff or the applicant.
- e) Questions by the Hearing Examiner.
- f) Rebuttal witnesses (if any).
- g) Closing arguments.

Any participant in the hearing may make all or part of his or her presentation through witnesses.

2.5 TESTIMONY FOR ORGANIZATIONS

Whenever the views of any formal or informal organization are to be presented, the organization shall designate a representative with authority to coordinate the presentation and to speak for the group. Any communications with the organization by the Hearing Examiner or by any party of record during the course of proceedings shall be through the designated representative.

2.6 BURDEN OF PROOF

For an application to be approved, a preponderance of the evidence presented at the hearing must support the conclusion that the application meets the legal decision criteria that apply.

2.7 REQUIRING FURTHER INFORMATION

When the Hearing Examiner concludes that further information is necessary to reach a decision, the record may be kept open to allow time for such information to be supplied. When appropriate, an opportunity to reply to such information shall be provided, either in writing or through further hearings.

2.8 HEARING EXAMINER DECISION

The Hearing Examiner's decision shall be in writing and shall contain findings of fact and conclusions of law supporting the result reached. Any conditions included as part of an approval shall be set forth.

2.9 DISTRIBUTION

The Hearing Examiner's decision shall be mailed to the applicant free of charge. The decision shall be mailed to other parties of record and to interested persons for the cost of reproduction and postage.

2.10 APPEAL OF HEARING EXAMINER'S DECISION

Any party of record may appeal the Hearing Examiner's decision to the Board of County Commissioners within 21 days from the date of the Examiner's decision. The Hearing Examiner's decision shall contain a statement advising parties of their appeal rights, including the applicable deadline for filing an appeal.

2.11 CONTENT OF THE RECORD

The record a permit hearing shall include at least the following:

- a) The application.
- b) The Staff Report.
- c) All documentary or physical evidence received and considered, including all exhibits filed.
- d) Electronic recordings of the proceedings.

Any party of record who desires a copy of the tape recordings of the proceedings or a written transcript must make arrangements with the Planning Department and pay the costs of reproducing the tapes or of transcribing them.

Chapter 3 - Appeal Hearings

3.1 WHO MAY APPEAL

On matters within the Hearing Examiner's jurisdiction, any person aggrieved by an administrative decision may appeal to the Examiner.

3.2 NOTICE OF APPEAL

An appeal to the Hearing Examiner of an administrative decision shall be in writing and shall be filed with the Planning Department. The appeal should contain the following:

- a) A brief statement showing how the appellant is significantly affected by or interested in the decision.
- b) A statement of the grounds for the appeal, explaining why the appellant believes the administrative decision is wrong.
- c) The requested relief, such as reversal or modification of the decision.
- d) The signature, mailing address and telephone number of the appellant.

Where the appellant is other than an individual, a representative shall be designated.

3.3 CLARIFICATION OF NOTICE OF APPEAL

If the appeal is incomplete or unclear and does not sufficiently explain the basis for the appeal, the Hearing Examiner may issue an order requiring that the appellant amend the appeal within 10 days of the date of the order. If the appeal is not satisfactorily amended within the time allowed, it shall be dismissed.

3.4 FRIVOLOUS APPEAL

The Hearing Examiner shall dismiss an appeal without hearing when it is determined by the Examiner to be without merit on its face, frivolous or brought merely for the purposes of delay.

3.5 PARTIES

The parties in appeal hearings shall be the County, the applicant and the appellant(s), if different from the applicant.

3.6 STAFF ANALYSIS AND DOCUMENTS REQUIRED FOR REVIEW

At least 10 days prior to the hearing, the Planning Department shall file a written analysis of the appeal with the Hearing Examiner, along with all documents from the file it determines are required for review of the matter. The analysis and an identification of the documents shall be mailed to the applicant and to the appellant(s), if different from the applicant. Any party may inspect the Department's file and identify additional documents for submission to the Hearing Examiner.

3.7 LIMITED PARTICIPATION

Normally appeal hearings will be limited to presentations made by the parties. All hearings are open to the public, but testimony is generally not allowed from persons who are not parties, unless they are called as witnesses by a party. Appellants have the right to organize their appeals as they see fit, including the selection of the

witnesses they wish to present. On rare occasions, at the discretion of the Hearing Examiner, a non-party, who is not called as a witness, may be allowed to testify when the testimony will supply additional information necessary for a decision.

3.8 MOTIONS

Any application to the Examiner for an order shall be by motion which, unless made during a hearing, shall be in writing, stating the reasons for the request and setting forth the relief or order sought. Motions to dismiss on grounds that the appeal is frivolous shall be made within five days of the filing of the appeal. All other motions shall be received at least five days in advance of the hearing.

3.9 FORMAT OF THE APPEAL HEARING

The appeal hearing will be of an informal nature, but organized so that testimony and other evidence can be presented efficiently. An appeal hearing shall include at least the following:

- a) A introductory outline of the procedure by the Examiner.
- b) Presentation by the appellant, including any witnesses.
- c) Cross-examination, if any, of appellant and appellant's witnesses.
- d) Presentation by the Planning Department staff, summarizing the Staff Analysis and including any witnesses for the County.
- e) Cross-examination, if any, of staff and staff's witnesses.
- f) Presentation by the project applicant, if different from appellant, including any witnesses.
- g) Cross-examination, if any of the project applicant and applicant's witnesses.
- h) Questions by the Hearing Examiner.
- i) Closing arguments.

3.10 PREHEARING CONFERENCE

The Hearing Examiner may schedule and hold a prehearing conference when it appears that the orderly and efficient conduct of the hearing will be served, or that settlement of the appeal through such a conference is likely. A prehearing conference may, among other things, consider:

- a) Simplification of the issues.
- b) The existence of undisputed facts to which the parties are willing to stipulate.
- c) The identification of witnesses and documentary or other evidence to be presented at hearing.
- d) Any reasonable needs any party may have for discovering the details of the case the other party intends to present.

Based upon the discussions and agreements at such a conference, the Hearing Examiner shall enter a Prehearing Order, which shall govern subsequent proceedings. If the case is settled at such a conference, the Examiner shall enter an Order reciting the terms of the settlement and dismissing the appeal.

3.11 BURDEN OF PROOF

For the administrative decision to be reversed or modified, the appellant has the burden to produce evidence sufficient to show that the legal decision criteria are not met by the proposal as approved. In appeals of procedural matters under SEPA, the determinations of the responsible official shall be entitled to substantial weight.

3.12 EXPERT TESTIMONY

Unless the parties agree otherwise, expert opinion, prepared for a specific case, shall be received only from witnesses appearing in person and available for cross examination. Affidavits, declarations or letters containing such opinion will generally be excluded.

3.13 HEARING EXAMINER DECISION

The Hearing Examiner's decision shall be in writing and shall contain findings of fact and conclusions of law supporting the result reached. Any conditions added by Examiner and the basis for them shall be set forth.

3.14 DISTRIBUTION

The Hearing Examiner's decision shall be mailed free of charge to the parties.

3.15 APPEAL OF HEARING EXAMINER'S DECISION

Any party may appeal the Hearing Examiner's decision on a SEPA appeal to the San Juan County Superior Court. Any party may appeal the Hearing Examiner's decision on any other appeal to the County Commissioners. Appeals shall be within the time allowed by law. The Hearing Examiner's decision shall contain a statement advising parties of their appeal rights, including the applicable deadline for filing an appeal.

3.16 CONTENT OF THE RECORD

The record of an appeal hearing conducted by the Examiner shall include at least the following:

- a) The Notice of Appeal and any amendments
- b) The Staff Analysis responding to the appeal and all accompanying documents.
- c) All documentary or physical evidence received and considered, including all exhibits filed.
- d) The Hearing Examiner's decision.
- e) Electronic recordings of the proceedings.

Any party who desires a copy of the tape recordings of the proceedings or a written transcript must make arrangements with the Planning Department and pay the costs of reproducing the tapes or of transcribing them.

Chapter 4 - Appeals to the County Commissioners

4.1 WHAT DECISIONS ARE APPEALABLE

Except for decisions involving procedural matters under the State Environmental Policy Act (SEPA), the decisions of the Hearing Examiner are appealable to the Board of County Commissioners.

4.2 WHO MAY APPEAL

Any party of record to a Hearing Examiner's final decision may appeal to the Commissioners.

4.3 WHEN MUST THE APPEAL BE FILED

An appeal to the Commissioners must be filed within twenty-one (21) days from the date of the Examiner's written decision.

4.4 WHERE IS THE APPEAL FILED

Appeals to the Commissioners are filed with the Planning Department.

4.5 BASIS FOR APPEALS

Appeals must be based solely on the record made before the Hearing Examiner. No further evidence may be submitted to the Commissioners. The appeal is to be directed at why, on the basis of the same evidence that the Hearing Examiner reviewed, the Commissioners should reach a different decision.

4.6 WHAT SHOULD THE APPEAL REQUEST CONTAIN

The appeal request must be in writing. Normally it should be entitled "Notice of Appeal." No particular form is required, but the following information should be included:

- a) Name and address of the appellant (If an organization, also give the name and address of the person who will represent and speak for the organization).
- b) Identification of decision being appealed and its subject.
- c) Grounds for the appeal, specifying how the Hearing Examiner's decision is not supported by the evidence or is contrary to law.
- d) Relief sought, such as reversal or modification of the Hearing Examiner's decision.

4.7 EXAMINER'S DECISION IS STAYED DURING APPEAL

An appeal to the County Commissioners stays the effective date of the Hearing Examiner's decision until the appeal is decided or withdrawn.

4.8 WHAT HAPPENS AFTER APPEAL IS FILED

After an appeal request is received, a hearing before the Commissioners is scheduled. At least 10 days prior to the hearing, the Commissioners are given a copy of the notice of appeal, all the materials in the record made before the Hearing Examiner, and all written statements filed in the appeal.

4.9 HOW APPELLANTS PARTICIPATE AFTER FILING APPEAL

No further evidence may be offered. No new issues may be introduced. Appellants make their cases through presentations -in writing, orally or both

based on what was placed in the record before the Hearing Examiner. Written statements must be submitted to the Planning Department at least 10 days prior to the Commissioners' hearing. Oral presentations are made at the hearing.

4.10 PARTICIPATION OF OTHER PARTIES

Other parties of record are notified of the filing of an appeal and of the date of the Commissioners' hearing. Such parties may participate, either in opposition or in support, in the same way as appellants. They are limited to presentations - in writing, orally or both - based on the record made before the Hearing Examiner. Written statements must be submitted to the Planning Department at least 10 days prior to the hearing before the Commissioners.

4.11 HEARING BEFORE THE COMMISSIONERS

The Commissioners hear presentations from the appellants and then from other parties of record who wish to be heard. The Commissioners must sustain the Examiner's decision unless it is not supported by substantial evidence or is contrary to law. The Commissioners may take one of the following actions:

- a) Grant the appeal with or without conditions.
- b) Deny the appeal, stating the reasons for the denial, or
- c) Remand the matter for further consideration by the Hearing Examiner, based on instructions from the Commissioners.

4.12 FINALITY OF COMMISSIONERS' DECISION

The decision of the Commissioners on an appeal from the Hearing Examiner is final unless further appeal is made. Further appeals of shoreline permit applications are made to the State Shorelines Hearings Board. Other appeals are to the Superior Court.